US EPA Region VI - Schuller International, Inc.

Meeting on the

Westbank CERCLA Site, LA

February 13, 1997

SCHULLER

We Build Environments

919550

EPA - Schuller Meeting
Westbank Asbestos CERCLA Site

February 13, 1997
Dallas, Texas

Westbank Asbestos CERCLA Site

- Johns-Manville - History of Asbestos
  - J-M was biggest asbestos company
    - most products, greatest revenue, biggest mine
    - by 1982 had the most personal injury lawsuits
    - Ch. 11 filed Aug. '82; plan consum. Nov. '88
    - exited all asbestos markets in 1985
    - after 1985 emphasis shifted from mfg./mkting. to health assessment and remediation
      - demonstrated concern for public health
      - significant and unique experience in asbestos health and remediation

Westbank Asbestos CERCLA Site

- J-M Marrero plant - history/background
  - operated 1929 - 1975/1985
  - products: cement pipe, roofing, floor tile
  - sold pipe and tile properties in 70s and 80s
  - roofing plant refurb. in 1991 for tenants and on-site property manager
  - today:
    - two tenants (ChemCon and Hayes-Dockside)
    - local property manager

Westbank Asbestos CERCLA Site

- Asbestos-containing materials in question at the site
  - Schuller has done very prelim. invest.
  - off spec. pipes routinely ground
    - enabled reuse in making pipe
    - took up less storage space
  - early on employees requested surplus pipe grindings for use as building material
  - later Parishes took material also

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Westbank Asbestos CERCLA Site

- ACM in question at the site, cont'd.
  - materials were essentially ground cement which resolidified when wetted
  - materials were quite durable but like all materials required maintenance
  - J-M did not add anything to material
    - EPA documents states a filler was added
    - filler was likely added by third party businesses
      - fillers would cause pipe batch to fail spec.
      - no reason to put fillers in waste

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Westbank Asbestos CERCLA Site

- Summary of Westbank Superfund Site
  - 1988: EPA/LaDEQ inquiry begins
  - 1990 - 1995: EPA studies sites; contractors gather data, assess exposure pathways and risks, write reports
  - 3/1995: EPA issues NFRAP
  - 12/1995: EPA reconsiders
  - 10/1996: EPA begins time crit. removal action for hundreds of sites - cost to date > $5mm - ultimate costs $22mm?

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Westbank Asbestos CERCLA Site

- Summary of Schuller concerns
  - Public Health
  - Inconsistency with prior EPA-mandated remedies
  - Lack of cost effectiveness

Westbank Asbestos CERCLA Site

- Summary of Schuller concerns
  - Public health
    - EPA selected as remedial action excavation and off-site disposal
    - action will include breaking up the cement materials, loading into containers, and shipping in dump trucks to an off-site landfill for disposal
    - precautions: wet method being employed
      - still such strong forces on materials may result in fiber release during excavation
      - fiber release possible during transit

Westbank Asbestos CERCLA Site

- Summary of Schuller concerns
  - inconsistency with prior EPA-mandated remedies
    - EPA generally mandates capping for asbestos superfund sites for two reasons
      - lower risk: when ACM is excavated and transported there is an enhanced risk of fiber release and traffic accidents
      - cost effectiveness: capping is also generally best remedy in terms of amount of risk reduced for given expenditure

Westbank Asbestos CERCLA Site

- inconsistency with prior EPA-mandated remedies, cont'd.
  - Schuller experience
    - Nashua, NH: EPA mandates capping and institutional controls for 200 residential sites
    - Waukegan, IL: EPA mandates capping and institutional controls for inactive landfill site
    - Billerica, MA: EPA mandates capping and institutional controls for inactive slurry ponds site
  - Reason: too risky and not cost effective to excavate for off-site disposal

Westbank Asbestos CERCLA Site

- inconsistency with prior EPA-mandated remedies, cont'd.
  - EPA decisions at other sites
    - South Bay, CA: capping and sealing in residential setting
    - Raymark, CN: on-site capping required by EPA

Westbank Asbestos CERCLA Site

- Summary of Schuller concerns
  - lack of cost effectiveness
    - excavation actions are usually more expensive
      - excavation
      - packaging
      - loading
      - transportation
      - disposal
    - even if take into account the O&M of cap

Westbank Asbestos CERCLA Site

- Schuller recommendations
  - stop current removal effort and switch to traditional remedial action
    - EPA has completed sites of "greatest concern"
    - EPA intended two phases of work
    - large, very expensive, long term project better suited to remedial process
    - there is a need to
      - perform risk assessment (hazard and exposure)
      - obtain more data and consider remedial alternatives (e.g., capping and institutional controls)

Westbank Asbestos CERCLA Site

- Schuller is unique company
  - J-M asbestos bankruptcy 1982 - 1988
    - J-M assets transferred to Manville Corp.
    - Manville renamed Schuller 1992, 1996
  - effects of reorganization
    - company "given" to asbestos victims
    - Manville Personal Injury Settlement Trust
      - given 72% of common stock
      - issued private bond
      - promised 20% of profits

Westbank Asbestos CERCLA Site

- Effect of Reorganization, cont'd.
  - status of ownership today
    - bond reissued as publicly traded security (SIGI)
    - profit sharing monetized with stock (GLS)
    - Trust now owns 82% of common stock
  - Schuller's mission:
    - get cash to Trust to pay victims' claims
    - enhance value of trust's investment to provide for future claims

Westbank Asbestos CERCLA Site

- Global CERCLA bankruptcy settlement
  - settlement in Manville v. US (91 Civ. 6683 [RWS] S.D.N.Y.) entered as order of court on Oct. 28, 1994
  - purpose of settlement twofold
    - identify all sites where Ch. 11 debtors were PRPs and settle all at same time
    - est. process as to future sites (i.e., unkn.. in 1994) to both quantify and limit company's CERCLA liability (response costs & NRD costs)

Westbank Asbestos CERCLA Site

- Terms of global CERCLA settlement
  - Ch. 11 debtors to pay 55% of "fair share" of site costs without regard to joint & several liability
    - general allocation factors to guide
    - Schuller not responsible for orphan share
  - payments limited to annual maximum of $850,000

Westbank Asbestos CERCLA Site

- Where do we go from here?
  - EPA to consider Schuller concerns
  - Schuller available for
    - additional meetings
    - consultation on health and remediation issues
    - consultation on health-related data and data acquisition
    - investigating the facts surrounding the ACM
  - what EPA decisions need to be made, when?

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	In Proceedings for a Reorganization Under Chapter 11.
JOHNS-MANVILLE CORPORATION, et al.,	
Debtors.	Case Nos. 82 B 11656 (BRL) Through 82 B 11676 (BRL)
	Adv. Pro. No. 91-5947A
MANVILLE CORPORATION, MANVILLE SALES CORPORATION (f/k/a Johns-Manville Sales Corporation),	
Plaintiffs,	COMPLAINT FOR DECLARATORY RELIEF
v.	
UNITED STATES OF AMERICA,	
Defendant.	

Manville Corporation and Manville Sales Corporation (formerly known as Johns-Manville Sales Corporation), for themselves and on behalf of the other debtors herein (collectively, "Manville" or the "Debtors"), by their co-counsel, Davis Polk & Wardwell and Kaye, Scholer, Fierman, Hays & Handler, allege upon personal knowledge as to themselves and their own acts and upon information and belief as to all other matters, as follows:

1. By this adversary proceeding Manville seeks a declaratory judgment that the defendant United States of America had certain claims, within the meaning of Section 101(5) of the Bankruptcy Code, against Manville; that the defendant did not file a proof of claim with respect to those claims, and made a deliberate, calculated decision not to file a proof of claim to avoid financial exposure to counterclaims the former debtors could have and would have asserted; and that the claims have been discharged by Section 1141 of the Bankruptcy Code upon confirmation of Manville's plan of reorganization. The defendant's environmental claims against Manville relate to four specific sites: an asbestos mill in California (the "Coalinga Asbestos Mill"); a landfill in Colorado (the "Lowry Landfill"); a facility in Maine (the "Union Chemical Site"); and a facility in Florida (the "Yellow Water Road Site"). Manville seeks a declaration that any and all claims with respect to these four sites by the United States against the former debtors under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq. ("CERCLA") and other applicable environmental statutes, were discharged upon confirmation of the plan of reorganization.

2. Manville is not attempting to avoid legal or moral obligations with respect to the environment. Manville

has spent and continues to spend millions of dollars annually to comply with environmental laws. However, the defendant forwards computer-generated demands to Manville at the same time that the United States effectively insists that Manville waive its position and defense that the defendant's claims with respect to these four sites have been discharged pursuant to federal law, and that such discharge was occasioned by operation of law and by the United States' deliberate and calculated decision not to assert such claims against the Debtors during the reorganization. Manville is therefore obligated and compelled to seek this declaratory relief with respect to the four sites.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157, 1334 and 2201; Bankruptcy Rule 7001; paragraphs 28(b), (f) and (k) of the Order of Confirmation; and the "Standing Order of Referral of Cases to Bankruptcy Judges" dated July 10, 1984 (Ward, Acting C.J.).

4. Venue is proper in this district pursuant to 28 U.S.C. § 1409(a).

PLAINTIFFS

5. Manville Corporation and Manville Sales Corporation are corporations organized and existing under the laws of the State of Delaware, with principal place of business in Denver, Colorado.

FACTUAL ALLEGATIONS

CERCLA

6. CERCLA was enacted in 1980 in response to the threat to public health and the environment posed by releases and threatened releases of hazardous substances. Section 104, 42 U.S.C. § 9604, authorizes the United States to respond to the release of hazardous substances with funds from the Hazardous Substance Superfund, established by Section 9507 of Title 26, 26 I.R.C. § 9507. In addition, if the United States Environmental Protection Agency (the "EPA") determines that there may be an imminent and substantial endangerment to the public health or welfare or to the environment, because of an actual or threatened release of a hazardous substance from a facility, it may compel or seek to compel responsible parties to undertake response actions under Section 106, 42 U.S.C. § 9606.

7. Pursuant to CERCLA, as amended by the Superfund Amendments and Reauthorization Act of 1986, and the National Contingency Plan, promulgated pursuant to Section 105 of

CERCLA, 42 U.S.C. § 9605, and codified at 40 C.F.R. pt. 300, response activity at a specific site may consist of either short-term emergency actions -- "removal" actions -- as defined in Section 101(23) of CERCLA, 42 U.S.C. § 9601(23), and described in 40 C.F.R. § 300.415, or longer-term, permanent remedies -- "remedial actions" -- as defined in Section 101(24) of CERCLA, 42 U.S.C. § 9601(24), and 40 C.F.R. § 300.5.

8. The EPA performs remedial actions after conducting a remedial investigation/feasibility study pursuant to 40 C.F.R. § 300.430, to determine the extent of the threat presented by the release or threatened release and to evaluate proposed remedies.

9. Under Section 107 of CERCLA, 42 U.S.C. § 9607, the United States may seek to recover the costs the EPA incurs in responding to the release or threatened release of hazardous substances from four categories of potentially liable parties, including the owner and operator of the facility or site, the owners and operators of the facility or site at the time of disposal of hazardous substances, persons who arranged for disposal or treatment of hazardous substances at the facility or site, and certain transporters of hazardous substances.

10. If the EPA determines that a release or threatened release of hazardous substances may present

imminent and substantial endangerment to the public health or welfare or the environment, it may compel by administrative order or seek to compel responsible parties to undertake response actions under Section 106 of CERCLA, 42 U.S.C. § 9606. A responsible party who fails without sufficient cause to comply with such an administrative order may be subject to civil penalties under Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), and/or treble damages under Section 107(c)(3), 42 U.S.C. § 9607(c)(3).

Manville's Chapter 11 Filing

11. On August 26, 1982, Johns-Manville Corporation and affiliated entities, including Manville Corporation and the predecessors of Manville Sales Corporation, filed petitions in this Court for reorganization under Chapter 11 of the Bankruptcy Code. Manville, once the largest miner of asbestos fiber and a major manufacturer of products containing asbestos, faced massive personal injury tort liabilities to asbestos health claimants who had been exposed to asbestos. Manville also faced billions of dollars in liabilities for asbestos-related property damage claims.

The Bar Order

12. On July 16, 1984, this Court entered an Order (the "Bar Order") fixing the bar date for filing any and all claims against Manville, with certain exceptions not relevant to this proceeding. The Bar Order specifically provided

that:

> "[A]ll claimants including . . . governmental units who assert a claim . . . against the Debtors . . . shall file proofs of such claims on or before October 31, 1984, (the "Bar Date") . . . .
>
> "[A]ll claimants who, by this order, are required to file a proof of claim . . . but who shall fail to do so on or before the Bar Date, shall not, with respect to any claim, be treated as a creditor of the Debtors for the purposes of voting on, and distribution under, any plan of reorganization, and shall be forever barred from asserting such claim against the Debtors . . . ."

13. Just prior to the Bar Date, the Attorneys General for numerous states, and certain other parties, sought an extension of the Bar Date for filing property damage claims, including environmental claims. This Court granted that request. By Order dated October 17, 1984, the Court extended to January 31, 1985 the Bar Date for filing such property damage claims against Manville.

14. The July 1984 Bar Order required the Debtors to engage in a significant notice campaign. Manville mailed notice to over 23,000 persons, including specific mailed notice to the Administrator of the EPA and separately mailed notices to all ten EPA regional offices, as well as to state environmental agencies. In addition, Bar Date notices were published in the fifty largest circulation newspapers in the United States, the largest circulation newspapers in each state and in major metropolitan areas of the United States and Canada, and in other publications.

The Defendant's Deliberate Decision
Not to File a Proof of Claim

15. The defendant United States was specifically aware of the Manville Chapter 11 filings shortly after they occurred in August 1982 as more specifically set forth in paragraph 22 hereof. The defendant United States, through the Civil Division of the Department of Justice, was specifically aware of (a) its right to file a proof of claim against the Manville estates for any "claim," within the meaning of Section 101(5) of the Bankruptcy Code, that the defendant United States might have against the estates; (b) its obligation to file a proof of claim to share in any recovery from the estates; and (c) the discharge provisions of Section 1141 of the Bankruptcy Code.

16. In addition, defendant United States specifically knew, by the EPA, that a proof of claim had to be filed to assert claims under CERCLA against persons, including Manville, which had filed petitions pursuant to, inter alia, Chapter 11 of the Bankruptcy Code. In May 1984, two months before the Manville Bar Order was authorized by this Court, the EPA circulated to all its Regions an advice entitled "Information Regarding CERCLA Enforcement Against Bankrupt Parties." The stated purpose was articulated as follows:

> "Thus, while the purpose of this memorandum is to aid the EPA official enforcing CERCLA, much of it will be relevant to future efforts by EPA to require bankrupt

> owner-operators of storage or disposal facilities, generators, and transporters to contribute as much as possible to the cleanup of the hazardous conditions they have created."

With respect to "claims" under Section 101(5) of the Bankruptcy Code, the EPA acknowledged:

> "The statute clearly states that a claim need not be premised on a civil action or a final judgment; it is sufficient if the claim is based on a simple right to payment as a result of work completed and cost incurred. Thus, the United States need not have received a judgment under CERCLA before making a claim against a bankrupt party. It is enough that the United States has a right to payment or an injunctive claim. The United States' right to payment can be based upon CERCLA Sections 107 and/or 104, or other authorities. Thus, the United States can proceed to file a claim in Bankruptcy Court."

With respect to filing proofs of claim, the EPA acknowledged in a section styled "Filing Proofs of Claim":

> "To have standing as a creditor, the United States must file a proof of claim form which states the name of the claimant; the amount of the debt or claim; the ground of liability; the date the claim became due or will become due under an open account theory . . . and, the nature of the claim (secured or general, unsecured)."

The EPA acknowledged:

> "The United States should be prepared at the time of filing of a proof of claim in Bankruptcy Court to prove that its claim should be allowed by the court. That is, if the agency <u>has spent (or will spend)</u> money at a site under the provisions of

> CERCLA 104, and wishes to recoup such expenditures under CERCLA Section 107, the United States will have to demonstrate to the Bankruptcy Court that the estate is in fact liable for such expenses under Section 107." (emphasis added; footnotes omitted).

In a footnote the EPA acknowledged:

> "In the case where the Agency has not spent Superfund money at the site but where we intend to conduct a fund-financed response action, the United States can file a proof of claim for an 'open account.' The proof of claim would indicate that the claim is founded on an open account which will become due upon the completion of the abatement actions by EPA."

17. Notwithstanding detailed knowledge of the requirements of the Bankruptcy Code for filing proofs of claim, and detailed knowledge of the defendant's "claims" with respect to the four sites as shown in paragraphs 29-80 hereof, the defendant United States did not file a proof of claim in the Manville bankruptcy proceedings at any time either before or after the Bar Date.

18. A determination to file a proof of claim on behalf of the defendant United States in a reorganization proceeding for claims under CERCLA could only be made by the Department of Justice, not the EPA.

19. After the Manville Chapter 11 filings, hearings were held before Congress concerning that filing. The United States, by the Department of Justice, was asked to

attend the hearings.

20. At this time, the fall of 1982, Manville had already instituted litigation against the United States, seeking contribution or indemnity from the United States for damages that Manville had paid and would pay to personal injury plaintiffs who had suffered asbestos-related injuries at naval shipyards owned or controlled by the United States. A significant defense asserted by the United States was the defense of sovereign immunity.

21. Section 106 of the Bankruptcy Code provided, inter alia, that filing of a proof of claim by the United States waived sovereign immunity and permitted the debtor to assert, and the bankruptcy court to adjudicate, counterclaims against the United States and claims for setoff. The section further provided that "a determination by the court of an issue . . . binds" the United States.

22. At the congressional hearings referred to in paragraph 19, the Department of Justice was specifically asked by Representative Miller whether the United States would become involved in the Manville Chapter 11 proceeding. The Assistant Attorney General for the Civil Division replied:

> "[T]he question of whether to participate in a bankruptcy proceeding to which the Government is not a party as a creditor or debtor and may not become one is a very complicated question. We have to

> weigh, among other things, what counterclaims could be brought against the Government. This is because to the extent we go into the bankruptcy proceeding we may waive sovereign immunity as to certain things where we would have sovereign immunity if we did not go into the bankruptcy proceeding." (emphasis added).

23. The defendant United States knew that it could and should file proofs of claim against the Manville estates for "claims" arising under CERCLA and related environmental laws, including "claims" arising from the four sites referred to herein. The defendant United States did not do so. On information and belief, defendant United States, by the Department of Justice, made a knowing, calculated, and informed decision not to file any proof of claim against the Manville estates to avoid, inter alia, the prospect of financial exposure of the defendant, the determination of issues by the Bankruptcy Court, and the prospect of application of principles of res judicata and collateral estoppel in actions by Manville and other producers of asbestos products in actions against the defendant.

24. In subsequent asbestos litigation outside the Bankruptcy Court, involving shipyards, the United States successfully asserted the sovereign immunity defense to defeat Manville's claims against the United States.

Confirmation of the Plan
of Reorganization

25. On December 22, 1986, after more than four years of complex reorganization proceedings, this Court entered an order confirming the Debtors' Second Amended and Restated Plan of Reorganization. The plan was forced to confront, and to deal with, complex issues transcending the perceived parochial interests of debtors and creditors. Established principles of bankruptcy law had to be applied in what was, at the time of the filing, a novel factual situation -- a corporate reorganization compelled by "mass toxic torts" with long latency periods. The Confirmation Order became final on October 28, 1988, and the Debtors' plan was substantially consummated on November 28, 1988. Manville's obligations under the plan will endure until all present or known asbestos health related claims have been paid or otherwise provided for by the Manville Personal Injury Settlement Trust.

26. At no time prior to the entry of the Confirmation Order on December 22, 1986 or the date that Order became final on November 28, 1988 did the defendant seek to file any "claim" against the Manville estates for CERCLA claims, including claims related to the four sites discussed in paragraphs 29-80 below.

27. Notwithstanding its considered decision not to file a proof of claim in accordance with the Bar Order, the defendant knew that it could, if it so elected, attempt to assert a claim for any asserted administrative expenses prior to confirmation of a plan of reorganization. The defendant United States, through the EPA, advised its Regions:

> "Claims based on administrative expenses can be filed any time before the Court has granted the debtor a discharge of debts. It is more difficult to determine when to file a proof of claim in a Chapter 11 reorganization because while the filing is required prior to the Court's acceptance of the reorganization plan, there is no mechanism for determining when that acceptance will take place. A proof of claim should be filed immediately, with telephone concurrence by EPA HQ (OECM and OWPE) and DOJ, if there is any reason to believe that a reorganization may be about to be concluded."

28. The defendant never filed or asserted any claim for response costs or enforcement actions based on Manville's alleged pre-petition or pre-confirmation acts.

The Four Sites

Coalinga Asbestos Mill

29. The Coalinga Asbestos Mill is located in Fresno County, California, approximately twenty miles from the City of Coalinga.

30. From 1959 to 1962, the Coalinga and Los Gatos Creek areas experienced a land rush for asbestos mining

claims. The Southern Pacific Railroad acquired the Coalinga Asbestos Mill land from the federal government as part of a land grant under the 1871 Railway Act.

31. In 1961, the Coalinga Asbestos Company was incorporated by Johns-Manville Sales Corporation, the Kern County Land Company and minority shareholders. In July 1961, the company entered into a 25-year lease of 239 acres with the Southern Pacific Land Company ("Southern Pacific", now Santa Fe Pacific Corporation) for purposes of mining and processing asbestos ore.

32. Mining operations, which began in 1962, were conducted on patented land, and the leased property was used for a mill site, asbestos waste disposal and warehousing.

33. In 1974, the Coalinga Asbestos Company ceased all mining and milling operations. In November 1975, the company assigned the Southern Pacific lease to Marmac Resources Company ("Marmac"), which used the Coalinga mill area to conduct a chromite milling operation until October 1977.

34. The EPA first inspected the Coalinga Asbestos Company operations in 1973. Although the EPA found that the national emission standards for hazardous air pollutants had not been complied with, the agency issued a waiver of compliance and permitted operations to continue. When the company ceased mining and milling in 1974, all operations had

reportedly been brought into compliance with environmental regulations.

35. In May 1980, the EPA again inspected the Coalinga site. On October 17, 1980, the California Regional Water Quality Control Board (the "Water Control Board") also inspected the mill area to determine if waste discharges from the facility were in compliance with State environmental regulations. The Water Control Board concluded that additional corrective measures were required to prevent asbestos from entering drainage basins. In April 1982, Southern Pacific and Manville submitted plans to the Water Control Board proposing remedial actions, but Manville filed for bankruptcy before the plans were implemented. Southern Pacific submitted another remediation plan to the Water Control Board in August 1983.

36. Southern Pacific had commenced a lawsuit against Manville and others in 1981 for breach of lease, negligence and private nuisance. The suit was pending in 1982 when Southern Pacific filed a proof of claim in the reorganization proceedings for indemnification for environmental liability arising from the leased property. The claim was settled by stipulation dated November 25, 1986, with this Court approving the settlement.

37. In September 1984, the EPA listed the Coalinga Asbestos Mill site on the National Priorities List of hazard-

ous waste sites. The Coalinga Superfund site includes: (a) the Coalinga mill area (the "Mill Area"); (b) a ponding basin of the California Aqueduct; and (c) the City of Coalinga. The EPA thereafter initiated remedial investigation/feasibility study activities at the site.

38. Manville received an EPA information request dated March 18, 1988 relating to the Coalinga Superfund site. On June 23, 1988, the EPA notified Manville of its potential liability under CERCLA for cleanup costs.

39. By letters dated June 23, 1988 and July 8, 1988, Manville informed the EPA that any claims for cleanup of the Coalinga Asbestos Mill site arising from Manville's pre-petition actions were barred by the defendant's failure to file a proof of claim in accordance with the Bar Order and discharged upon confirmation of Manville's plan of reorganization.

40. Manville received a formal notice letter from the EPA dated February 22, 1989, advising Manville that its position regarding the bankruptcy discharge defense was currently under review by the EPA and the Department of Justice.

41. In April 1989, the EPA informed Manville that "[a]lthough EPA and [the Department of Justice] are continuing to investigate the matter, we tentatively have determined that Manville Sales Corporation may be liable under . . .

[CERCLA] for past and future response actions involving the City of Coalinga Operable Unit."

42. On September 21, 1990, the EPA issued a Record of Decision ("ROD") for the Mill Area Operable Unit of the Coalinga Superfund site. The EPA estimated that the cleanup will take two years and cost at least $1.8 million.

43. On January 30, 1991 and February 1, 1991, pursuant to CERCLA Section 122(e), the EPA sent Manville and five other potentially responsible parties ("PRPs") a Special Notice Letter for the Mill Area Operable Unit, requesting a "good faith" offer by the PRPs to conduct remedial action. The EPA also demanded payment of $1,531,947.30 plus interest for response costs incurred by the EPA pursuant to CERCLA Section 107(a).

44. By letter dated March 26, 1991, Manville responded to the Special Notice Letter and demand for payment. Manville again informed the EPA that "[s]ince the United States did not file a proof of claim in the Manville bankruptcy proceedings, any prebankruptcy liability which Manville may have had for such alleged disposal at the Coalinga Superfund site has been fully discharged."

45. Manville has been advised that the EPA will issue imminently an Administrative Order against Manville under Section 106(a) of CERCLA.

Lowry Landfill

46. The Lowry Landfill is located in Arapahoe County, Colorado and is owned by the City and County of Denver. A portion of the landfill designated Section 6 (the "Landfill") was operated as an industrial and municipal landfill from approximately 1966 to 1980.

47. The EPA began investigating the Landfill in approximately 1981. On September 21, 1984, the Landfill was included on the National Priorities List.

48. Between July 1977 and November 1980, Waste Transport Company allegedly delivered liquid sludge from the Manville Technical Center (formerly known as Manville Research Center) to the Landfill.

49. The EPA knew as early as 1983 of possible Manville contributions to the Landfill. In that year, Johns-Manville Corp. was identified in a response to interrogatories submitted by the United States in Denver v. Ruckelshaus, No. 83-JM-1043 (D. Colo. 1983), as a "person[] who generated wastes which were subsequently disposed of at the Lowry Landfill." At issue in Ruckelshaus was the lawfulness of the conveyance by the United States to Denver of the land on which the Landfill is located.

50. Manville received requests from the EPA for information, pursuant to CERCLA Section 104 and Section 3007 of the Resource Conservation and Recovery Act, 42 U.S.C.

§ 6927, regarding waste disposal at the Lowry Landfill on September 10, 1985, April 26, 1986 and August 28, 1986. After searching its records, in August and September 1986, Manville responded that it had no knowledge or records of waste shipments to the Landfill from 1966 to 1980. Based on available records, EPA did not name Manville as a PRP with respect to the removal and remedial costs at the Landfill.

51. By letter dated December 7, 1990, however, the EPA notified Manville that: (a) it was among "31 PRPs who were previously informed they tentatively were no longer considered PRPs [and were] being brought back into the system" and (b) Manville contributed 702,761 gallons (or 0.43% of the total volume of waste) of waste water and oil to the Landfill.

52. On February 15, 1991, Manville responded to the EPA's letter. Manville informed the EPA that, because the volumetric contribution seemed unusually high, it had initiated an investigation to determine whether Manville ever sent waste to the Lowry Landfill and if so, the amount. As Manville informed the EPA, the investigation lead to four conclusions:

> "First, EPA has not shown that any Manville waste was sent to Lowry. Second, since the Manville waste consisted almost entirely of inert materials, EPA has not demonstrated that the waste was or contained hazardous substances. Third, the total possible amount of potential . . .

hazardous substances generated for off-site disposal was approximately 1,800 gallons, not the 703,000 estimated by EPA. Finally, since the United States did not file a proof of claim in the Manville bankruptcy proceedings, any liability which Manville may have had for such off-site disposal [arising from the alleged pre-petition disposal] has been fully discharged."

53. In May 1991, the EPA revised its estimate of Manville's waste contribution to 250,000 gallons (.17%).

54. As of September 1989, the EPA had incurred response costs of approximately $11 million. The EPA has estimated that the ultimate response costs for clean up of the Landfill and adjacent areas will be approximately $500 million.

Union Chemical Site

55. The Union Chemical Site is a 12.5-acre parcel located in South Hope, Maine. Union Chemical Company owned and operated the site from approximately 1967 until the fall of 1986, when the Maine Department of Environmental Protection (the "MDEP") took full possession of the site.

56. Union Chemical Company was incorporated in 1967 as a paint stripping and solvent manufacturing business. As an adjunct to its manufacturing, the company installed a small solvent recovery unit in 1969. Distillation capacity

was later expanded to provide reclaiming and recycling services for other companies. In late 1979, the MDEP discovered groundwater contamination at the site.

57. Manville's Lewiston, Maine, roofing plant allegedly sent 6,450 gallons (of a total of 10 million gallons) of waste solvents to the Union Chemical Site between December 19, 1979 and April 10, 1984.

58. Separate and joint response actions by the EPA and the MDEP were taken in late 1984 after hazardous waste treatment operations ceased in June 1984. In April 1985, the Union Chemical Site was first proposed for inclusion on the National Priorities List. Through efforts of the MDEP, the EPA, and approximately 290 PRPs, two Administrative Orders by Consent were signed in 1987. Under the Orders, the settling PRPs agreed to reimburse the EPA and the State of Maine for most of the response costs incurred for past cleanup activities at the site, and to finance a remedial investigation/feasibility study. The PRPs retained Canonie Environmental Services Corporation to perform the study. The site was reproposed for inclusion on the National Priorities List in June 1988 and formally included on the list in October 1989.

59. Manville received its first notice of potential responsibility on March 23, 1987. On December 3, 1990, Manville received a CERCLA Section 104(e) Request to provide

financial and ownership information about Manville and its subsidiaries. Manville responded to the EPA request on December 21, 1990.

60. On December 27, 1990, the EPA issued a ROD for the site estimating cleanup costs at $10-$15 million.

61. On March 6, 1991, Manville received a Special Notice Letter requesting a "good faith" offer by the PRPs to conduct remedial action. The EPA also demanded payment of $1,750,000 plus interest for response costs incurred by the EPA, pursuant to CERCLA Section 107(a)(4)(D).

62. By letter dated May 22, 1991, Manville responded to the Special Notice Letter and demand for payment. Manville advised the EPA that any claims against the company for cleanup of the Union Chemical Site arising from Manville's pre-petition or pre-confirmation actions were barred by the defendant's failure to file a proof of claim in accordance with the Bar Order and discharged upon confirmation of Manville's plan of reorganization.

Yellow Water Road Site

63. The Yellow Water Road Site is in Baldwin, Duval County, Florida. The site is owned by American Environmental Energy Corporation ("AEEC"), and was used to store transformers, liquids and other materials contaminated with polychlorinated biphenyls ("PCBs").

64. In October 1981, AEEC entered into a joint venture with American Electric Corporation ("AEC") and another corporation, for purposes of acquiring an incinerator for the site and obtaining a permit under the Toxic Substances Control Act ("TSCA") to incinerate PCBs. As part of this enterprise, beginning in 1981 or 1982, PCB-contaminated liquids and equipment were stored at the site.

65. AEC transported transformers and other PCB-contaminated materials to the site from a facility located on Ellis Road in Jacksonville, Florida. The transformers were then torn apart at the site by AEEC personnel to salvage copper, resulting in the release of PCBs into the environment.

66. The incinerator permit was never obtained and by October 1982 the joint venture was disbanded. On December 10, 1982, AEC ceased disposing hazardous substances at the Yellow Water Road Site.

67. Manville's Green Cove Springs, Florida pipe plant was an AEC customer and had sent its waste to AEC's Ellis Road facility. In December 1982, upon authorization by the Court under Section 363 of the Bankruptcy Code, Manville sold the pipe plant to J-M Manufacturing Company, Inc. ("J-M Manufacturing").

68. In 1982, the EPA in cooperation with the Federal Bureau of Investigation, commenced a criminal inves-

tigation of AEC. The investigation focused on a contract between AEC and the Department of Defense (the "DOD") for disposal of PCB-contaminated materials, including forty-seven transformers. At trial, the prosecution charged that AEC had represented to the DOD that it had disposed of the transformers at facilities approved by the EPA under TSCA, when it had instead dumped the transformers at the Yellow Water Road Site. In May 1984, AEC was acquitted of these charges.

69. In November 1984, the EPA initiated a removal action at the site.

70. In response to the release and threatened release of PCBs, the EPA conducted an emergency response action between December 1984 and March 1985.

71. The Yellow Water Road Site was listed on the National Priorities List in June 1986.

72. In March 1987, the EPA sent information requests to sixty-seven potentially responsible parties. The EPA determined that these PRPs may have contributed to the contamination at the Yellow Water Road Site and therefore may be liable for response costs and damages pursuant to CERCLA Section 107. J-M Manufacturing received such a request.

73. Fifty-three of the sixty-seven PRPs formed the Yellow Water Road Steering Committee (the "Steering Committee"). In April 1987, Manville was notified by the chairman of the Steering Committee of its PRP status.

74. On September 24, 1987, the EPA entered into an Administrative Order by Consent with the members of the Steering Committee, under which the committee agreed to perform a remedial investigation/feasibility study for the site.

75. The Steering Committee conducted surface removal activities at the site, under an Administrative Order dated April 29, 1988.

76. The final reports on the remedial investigation/feasibility study were submitted to the EPA in 1990.

77. The EPA selected a remedy for soil contamination (defined as "Operable Unit One") in a ROD dated September 28, 1990. A decision on the remedy for groundwater contamination was reserved.

78. The EPA has alleged that Manville's volumetric waste contribution at the site was 0.08%.

79. On March 5, 1991, the EPA issued a Unilateral Administrative Order For Remedial Design under Section 106(a) of CERCLA. The Order directs Manville Sales Corporation and eighty-seven other respondents, which "are customers of AEC and generators of PCBs and PCB-contaminated materials present at the Site," to perform the remedial design for Operable Unit One, as described in the ROD.

80. By letter dated March 21, 1991, Manville responded to the Unilateral Administrative Order. Manville

informed the EPA that it "has no knowledge of having sent any materials to this Site and therefore believes that it has a 'sufficient cause' defense under Sections 106(b) and 107(c)(3) of CERCLA." In addition, Manville advised:

> "Manville has been through a reorganization under Chapter 11 of the federal bankruptcy code since December 10, 1982, the last date of alleged disposal by all parties at the Site. Any disposal which took place prior to Manville's Chapter 11 proceedings therefore represents pre-bankruptcy activity. Since the United States did not file a proof of claim in the Manville bankruptcy proceedings, any pre-bankruptcy liability which Manville may have had for such alleged disposal at the Site has been fully discharged. Manville therefore believes that it has 'sufficient cause' defenses under Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. 9606(b) and 9607(c)(3), based on Manville's bankruptcy proceedings."

FIRST CAUSE OF ACTION
(Bar Order)

81. Manville repeats and realleges paragraphs 1 through 80.

82. The United States did not file a proof of claim against the Debtors for environmental claims arising from the Debtors' pre-petition or pre-confirmation actions.

83. Under the July 16, 1984 Bar Order, the United States is barred from asserting such claims against Manville

with respect to the Coalinga Asbestos Mill, the Lowry Landfill, the Union Chemical Site and the Yellow Water Road Site (collectively, the "Sites").

SECOND CAUSE OF ACTION
(Response Costs)

84. Manville repeats and realleges paragraphs 1 through 80.

85. Manville's liabilities for response costs at the Sites, arising from pre-petition or pre-confirmation acts, are "claims" within the meaning of Section 101(5) of the Bankruptcy Code.

86. Pursuant to Section 1141 of the Code, any and all claims by the United States against the Debtors for recovery of response costs under CERCLA or other environmental statutes, which have been or will be incurred at the Sites, were discharged upon confirmation of the Debtors' plan of reorganization.

THIRD CAUSE OF ACTION
(Enforcement Actions)

87. Manville repeats and realleges paragraphs 1 through 80.

88. Actions by the United States to enforce cleanup at the Sites, arising from Manville's pre-petition or pre-confirmation acts, are "claims" under Section 101(5) of the Bankruptcy Code.

89. Pursuant to Section 1141 of the Code, such claims against the Debtors were discharged upon confirmation of the plan of reorganization.

WHEREFORE, plaintiffs seek judgment:

(a) declaring that because the defendant failed to file a proof of claim in accordance with this Court's July 16, 1984 Bar Order, the United States is barred from asserting environmental claims against Manville with respect to the Coalinga Asbestos Mill, the Lowry Landfill, the Union Chemical Site, and the Yellow Water Road Site; and

(b) declaring that any liabilities under CERCLA and other applicable environmental statutes, arising from Manville's pre-petition or pre-confirmation acts, with respect to the four Sites have been discharged pursuant to Section 1141 of the Bankruptcy Code; and

(c) declaring that any and all claims by the United States for recovery of environmental response costs, which have been or will be incurred at the Sites, were discharged upon confirmation of the Debtors' plan of reorganization; and

(d) declaring that actions by the United States to enforce cleanup at the Sites, arising from Manville's pre-petition or pre-confirmation acts, are "claims" that were discharged upon plan confirmation; and

(e) declaring that Manville has good and sufficient cause not to comply with any order issued by the EPA with respect to the Sites; and

(f) granting Manville such other and further relief as is just and proper.

Dated: New York, New York
July 19, 1991

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MANVILLE CORPORATION, MANVILLE SALES CORPORATION (f/k/a Johns-Manville Sales Corporation),

Plaintiffs,

-against-

UNITED STATES OF AMERICA,

Defendant.

91 Civ. 6683 (RWS)

UNITED STATES' REQUEST FOR APPROVAL AND ENTRY OF STIPULATION AND ORDER OF SETTLEMENT AND DISMISSAL

The United States hereby requests that this Court approve and enter the Stipulation And Order of Settlement And Dismissal (the "Settlement Agreement") between the United States and the plaintiffs, Manville Corporation and Manville Sales Corporation (collectively, "Manville"), which agreement was lodged on June 24, 1994 in this Court. The grounds in support of the United States' request are set forth below.

A. Procedural History

On August 26, 1982, Johns-Manville Corporation and numerous affiliated entities filed voluntary petitions under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy

Court").

On December 4, 1986 (the "Confirmation Date"), the Bankruptcy Court confirmed Manville's plan of reorganization, thereby discharging all claims against Manville arising before the date of confirmation. See 11 U.S.C. § 1141(d).

Manville instituted this action in July 1991 in the Bankruptcy Court seeking a determination that their liability to the United States under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq. ("CERCLA"), "and other environmental statutes" at four hazardous waste sites has been discharged in bankruptcy. The parties agreed to transfer Manville's action to this Court pursuant to 28 U.S.C. § 157(d).[1]

Subsequently, the parties engaged in extended and intensive arms-length negotiations, which culminated in the Settlement Agreement. On June 24, 1994, the proposed Settlement Agreement was lodged with this Court. On July 21, 1994, notice of lodging of the proposed Settlement Agreement was published in the Federal Register, 59 F.R. 139 (July 21, 1993), for a thirty-day public comment period. As discussed below, two comments were received, but neither comment opposed the entry of the Settlement Agreement.

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[1] That section authorizes the District Court, rather than the Bankruptcy Court, to decide issues involving both bankruptcy and other federal commerce-clause-based statutes.

B. The Settlement Agreement

The settlement divides Manville's CERCLA liability into four categories: Manville-Owned Sites (Section III), Class A Sites (Section IV), Class B Sites (Section V) and Additional Sites (Section VI), and specifies the treatment that each category will receive. In short, Manville-Owned Sites are not affected by the bankruptcy case, Class A Sites are resolved in full now (both as to CERCLA response costs and natural resource damages), Class B Sites are resolved in full now (but only as to CERCLA response costs), and Additional Sites will be resolved in the future using a detailed procedure set forth in the Settlement Agreement.

1. Manville-Owned Sites

Paragraph 41 of the Settlement Agreement provides that no claim that the United States might have had under "Relevant Law"[2] with respect to any "Manville-Owned Site" will "be deemed to be or treated as discharged" under the Bankruptcy Code or Manville's Plan of Reorganization. Paragraph 41 further provides that the United States may pursue enforcement actions for such sites in the same manner and in the same tribunals as if there had never been a bankruptcy case.

2. Class A Sites

The Class A Sites, which are addressed in paragraphs 42 to 49 of the Settlement Agreement, are defined as eight particular sites to which Manville sent hazardous waste pre-bankruptcy. For

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[2] "Relevant Law" is defined as Sections 106 and 107 of CERCLA and 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973 ("RCRA").

each of those sites, the United States has agreed to resolve Manville's liability for past and future response costs and for natural resource damages in return for cash payments to be made by Manville. In general, the payments to be made by Manville were negotiated based on an agreement that Manville would pay 55% of its allocable share of the total estimated costs for the Site.

Manville will pay a total of $1,129,790 to EPA for the Class A Sites, and $3,779 to the Department of the Interior ("DOI"), as trustee for natural resources. In exchange for these payments, Manville will obtain a covenant not to sue for claims under CERCLA and/or Section 7003 of RCRA for all civil liability for these sites (para. 70). The covenant not to sue excludes both criminal liability and any claims based on post-confirmation acts, omissions or conduct of Manville (para. 73).

3. Class B Sites

The Settlement Agreement defines four sites as being Class B Sites, which are addressed in paragraphs 50-53 of the Settlement Agreement. These sites are treated in essentially the same way as the Class A Sites, with one difference. Specifically, at Class A Sites the United States has agreed to resolve both CERCLA response costs and natural resource damage claims. At Class B Sites, where the natural resource damages trustees did not have sufficient information to resolve their claims now, the United States is not resolving natural resource damage claims. Manville will pay a total of $537,300 for the four Class B Sites.

Manville will receive the same covenant not to sue for

the Class A Sites as the Class B Sites (para. 70). However, the Settlement Agreement provides that any natural resource damage claims for the Class B Sites will be treated as Additional Sites, to be dealt with in accordance with the provisions discussed below (para. 54).

4. Additional Sites

The Settlement Agreement defines Additional Sites, which are addressed in paragraphs 54-68 of the Settlement Agreement, as sites, other than Class A, Class B or Manville-Owned Sites, for which Manville's liability under CERCLA would arise from pre-confirmation disposals of hazardous substances. The Agreement contains an agreement by Manville that it will pay 55% of its allocable share for each such site, as they are identified, and sets forth a procedure for determining that share. The United States has agreed not to pursue Manville for Additional Sites other than through the procedures set forth in the Agreement (para. 55), as set forth below.

Manville has agreed to pay 55% of any "Manville Response Cost Liability" or "Manville Natural Resource Damage Liability" for each Additional Site[3] (para. 55). When either Manville or the United States determines that Manville may have liability for a particular Additional Site, it will notify the other party and may propose a Manville Share (para. 57). Thereafter, the parties will

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[3] The Manville Response Cost Liability is defined as the product of the "Manville Share" (Manville's allocable share for the Site) times the total costs incurred at the Site. A similar definition applies to the Manville Natural Resource Damage Liability.

attempt to negotiate a Manville Share for the site. If such negotiations are successful, then that Manville Share will apply to the response costs and natural resource damages incurred at the site (para. 57(d)).

In the event the initial negotiation is not successful, then either party may utilize an alternative-dispute-resolution-like process, calling for an independent Manville Only Non-Binding Allocation Of Responsibility (referred to in the Settlement Agreement as a "MONBAR") for the site (para. 57(f)). If no party utilizes this process, the site at issue will no longer be subject to the Settlement Agreement.

If a MONBAR is performed, the independent party performing the MONBAR[4] will propose a Manville Share (using the factors set forth in Section 122(e)(3) of CERCLA for non-binding allocations of responsibility, including volume, toxicity, mobility, strength of evidence and aggravating factors (para. 58)), and submit it to both parties. If both agree, the Manville Share will be set at the agreed-upon figure (para. 57(g)(1)). If neither agrees, there will be a second attempt at negotiation (para. 57(g)(2)). If this is not successful, the site will no longer be subject to the Settlement Agreement (para. 57(g)(2)).

Finally, if one party agrees with the MONBAR determination but the other does not, the concurring party will have the option of having the site excluded from the agreement or

[4] The Agreement provides that the MONBAR will be performed by EnDispute, Clean Sites, Judicial Arbiter Group "or any other person mutually acceptable to the parties" (para. 58).

taking the matter this Court for resolution (para. 57(g)(3)).

Once a Manville Share has been determined, Manville will then pay 55% of that share times the costs or damages for the site (para. 55-56). Since those costs or damages may not be immediately known (if the site has not been remediated or a natural resource damage assessment has not been completed), the Settlement Agreement contains procedures allowing Manville to make an initial $10,000 payment if it chooses (para. 63). Thereafter, Manville will make payments after it receives itemized cost or damage statements from the Government (paras. 64-65). This is a fallback procedure that will be used only if an immediate cash-out settlement for the site cannot be reached.

Finally, Manville's liability for Additional Sites is subject to an annual cap of $850,000 (para. 67). Manville requested this provision in light of the fact that it is essentially operating for the benefit of asbestos health claimants and so that it would have more certainty in budgeting for CERCLA liabilities. However, if the cap is reached in any year, the excess will be paid in the following year or years (subject to the annual cap in those years), with interest accruing at the rate earned by the Superfund.

C. Public Comments Received

During the thirty-day public comment period, the United States Department of Justice received two public comments. Neither of the public comments expressed opposition to the Settlement Agreement or requested that the Settlement Agreement not be

entered. Neither comment opposes entry of the Proposed Agreement. Rather, the comments, in essence, seek clarification of the Proposed Agreement of its effect. The comments received and the United States' views with respect to the comments, are described below.

1. Comment From the Commercial Oil Services Site Group Executive Committee

One of the Class A Sites listed in the Settlement Agreement is the Commercial Oil Site, located in Oregon, Ohio. The Settlement Agreement provides that, with respect to the Commercial Oil Site, Manville will pay the EPA $147,400 (para. 42). Manville will also pay DOI $2,849 in natural resource damages, representing 55% of DOI's present estimate of damages for the Commercial Oil Site. (para. 42).

The Commercial Oil Services Site Group Executive Committee (the "Commercial Oil Committee") represents the parties (the "Respondents") undertaking the clean up of the Commercial Oil Site pursuant to an Administrative Order on Consent ("AOC"). In its comment, the Commercial Oil Committee notes, based upon information received from the EPA concerning the application of the settlement proceeds, that the amount paid by Manville under the Settlement Agreement will serve to reduce the amount of costs that the parties to the AOC would otherwise have to pay on account of EPA's oversight costs.[5] The Commercial Oil Committee does not object to the settlement amount and states that "the application of the

[5] A copy of the Commercial Oil Committee's comments is attached hereto as exhibit A.

Manville settlement amount as a credit to the Commercial Oil Superfund Account is fair and reasonable under the circumstances." See Exhibit A, page 2.

Because the Commercial Oil Committee does not oppose the entry of the Proposed Agreement and because EPA will credit the proceeds of the Commercial Oil settlement as stated, this comment provides no reason not to enter the Proposed Agreement.

2. Comment From the City And County Of Denver, Waste Management of Colorado, Inc. and Chemical Waste Management, Inc.

Another of the Class A Sites listed in the Settlement Agreement is the Lowry Landfill Site, located in Arapahoe County, Colorado. The Settlement Agreement provides that, with respect to the Lowry Landfill Site, Manville will pay EPA $750,000 (para. 45).

Three potentially responsible parties at the Lowry Superfund Site, the City and County of Denver, Waste Management of Colorado, Inc. and Chemical Waste Management, Inc. (collectively, the "Lowry Parties") filed public comments.[6] In their public comment, the Lowry Parties raise no objection to the settlement as it relates to the Lowry Site and, in fact, express their support for it. See Exhibit B at 1, 2. Rather, the Lowry Parties state, they "wish to make clear" that the $750,000 payment that Manville has agreed to make in the Settlement Agreement to resolve its liability at the Lowry Site "is not contingent, in any part." Id. at 1.

[6] A copy of the Lowry Parties' public comments are attached hereto as Exhibit B.

Under the Settlement Agreement, once this Court approves the Settlement Agreement, Manville will have an unconditional obligation to pay $750,000 with respect to its liability at the Lowry Site (para. 45). In fact, the Settlement Agreement expressly requires that Manville make payments with respect to liability at each of the Class A and Class B Sites within 30 days after this Court's entry of an Order approving this Settlement Agreement (paras. 42-53). Manville has informed the United States that it agrees that, under the Settlement Agreement, its obligation to make the payments specified in paragraphs 42-53 is conditioned only upon this Court's entry of an Order approving the Settlement Agreement.

D. The Settlement Is Fair And Reasonable And Should Be Approved

In light of the risk that all of the United States' claims for CERCLA response costs and natural resource damages arising from Manville's pre-confirmation activities have been discharged, the United States believes that the provisions of the settlement are fair and reasonable. A central provision of the settlement is the commitment by Manville to pay 55% of its fair share of both CERCLA response costs and natural resource damages for any site where its CERCLA liability arises from its pre-confirmation activities (activities prior to December 22, 1986). This commitment is beneficial to the United States because of the substantial risk that claims for CERCLA response costs and natural resources damages arising from such pre-confirmation activities have been discharged in bankruptcy. See United States v. LTV Steel Corp. (In re Chateaugay Corp.), 944 F.2d 997 (2d Cir. 1991) (all

past and future response costs incurred on account of a release or threatened release of hazardous substance occurring pre-confirmation are dischargable in a Chapter 11 bankruptcy).

In sum, the proposed Settlement Agreement is fair and reasonable and consistent with the goals of the environmental statutes referred to in the agreement. See H.R. Rep. No. 253, Part 3, 99th Cong., 1st Sess. 19 (1985) (court's role in reviewing settlement is to "satisfy itself that the settlement is reasonable, fair, and consistent with the purposes that CERCLA is intended to serve"); United States v. Akzo Coatings of America, Inc., 949 F.2d 1409, 1424 (6th Cir. 1991) ("When reviewing a consent decree, a court need only 'satisfy itself that the settlement is reasonable, fair, and consistent with the purposes that CERCLA is intended to serve.'"). As the Court of Appeals for the Sixth Circuit explained, "[i]n evaluating [a] decree, it is not our function to determine whether this is the best possible settlement that could have been obtained, but only whether it is fair, adequate and reasonable." Akzo 949 F.2d at 1436; United States v. Cannons Engineering Corp., 899 F.2d 79 at 84 (same).

The Settlement Agreement was the result of extended and intensive arms-length negotiations between the United States and Manville and provides for a substantial recovery under CERCLA. Approval and entry of the Settlement Agreement is in accordance with the well-established policy of encouraging settlement of CERCLA cases. See, e.g., 42 U.S.C. § 9622(a); United States v. Hooker Chemical & Plastics Corp., 776 F.2d 410, 411 (2d Cir. 1985)

(policy of encouraging settlements); Akzo, 949 F.2d at 1436 (presumption in favor of negotiated settlements such as this); Cannons, 899 F.2d at 84 (same).

WHEREFORE, the United States hereby requests approval and entry of the proposed Settlement Agreement.

Dated: New York, New York
October , 1994

Respectfully submitted,

LOIS SCHIFFER
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Environment and Natural Resources Division

By: _____
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Attorneys for the United States of America

So Ordered:
USDJ
10-28-94

CERTIFICATE OF SERVICE

I hereby certify that, on October 26, 1994, I caused the attached United States' Request for Approval and Entry of Stipulation and Order of Settlement and Dismissal to be served, by hand, upon:

Lowell Gordon Harriss, Esq
Davis, Polk & Wardwell
450 Lexington Avenue
New York, New York 10017

EDWARD A. SMITH

MARY JO WHITE
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MANVILLE CORPORATION, MANVILLE SALES CORPORATION (f/k/a Johns-Manville Sales Corporation),	:	
Plaintiffs,	:	
-against-	:	91 Civ. 6683 (RWS)
UNITED STATES OF AMERICA,	:	
Defendant.	:	

NOTICE OF LODGING OF PROPOSED STIPULATION AND ORDER OF SETTLEMENT AND DISMISSAL

The United States of America is hereby lodging with the Court attached proposal Stipulation and Order of Settlement and Dismissal (the "Proposed Stipulation").

The United States requests that the Court not enter the Proposed Stipulation or schedule any hearing on it at this time. Rather, pursuant to 28 C.F.R. § 50.7, notice of the lodging of the Proposed Stipulation will be published in the Federal Register, following which the United States Department of Justice will receive public comments on the proposed Settlement Agreement for a 30-day period. At the conclusion of the comment period, the United States will file with the Court any comments received, as well as responses to the comments, and at that time, if

appropriate, request the Court to approve and enter the Proposed Stipulation.

Dated: New York, New York
June 24, 1994

Respectfully submitted,

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Attorney for the United States
of America

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CERTIFICATE OF SERVICE

I, Edward A. Smith, hereby certify that on the 24th day of June, 1994, I caused service to be made of a true copy of the within Notice of Lodging of Proposed Stipulation and Order of Settlement And Dismissal, by hand, upon:

Lowell Gordon Harriss, Esq.
Davis Polk & Wardwell
450 Lexington Avenue
New York, New York 10017

EDWARD A. SMITH

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MANVILLE CORPORATION AND MANVILLE SALES CORPORATION (f/k/a Johns-Manville Sales Corp.),	:	91 Civ. 6683(RWS)
Plaintiffs,	:	STIPULATION AND ORDER OF SETTLEMENT
- against -	:	AND DISMISSAL
UNITED STATES OF AMERICA,	:	
Defendant.	:	

I. RECITALS

1. On August 26, 1982, Johns-Manville Corporation and various affiliated entities, including Manville Corporation and the predecessors of Manville Sales Corporation, filed petitions in the Bankruptcy Court for reorganization under Chapter 11 of the Bankruptcy Code. The Chapter 11 filings resulted from the actual and contingent liabilities of Manville to tens of thousands of asbestos health claimants.

2. On December 22, 1986, the Bankruptcy Court confirmed Manville's Second Amended and Restated Plan of

Reorganization (the "Plan"). The Confirmation Order became final on November 28, 1988.

3. Under the Plan, a Trust was established to pay asbestos health claims of Manville. The Trust was funded by (a) proceeds of insurance settlements; (b) up to 80% of the common stock of the reorganized Manville; (c) bonds in the aggregate amount of $1.8 billion; (d) $200 million; and (e) commencing in 1992, 20% of the profits of Manville. These are the only assets that asbestos health claimants can look to for payment of liabilities of Manville. At the time the plan was confirmed, it was estimated that there would be approximately 100,000 asbestos health claimants; as of the date hereof, over 200,000 claims have been filed with the Trust; a study by experts appointed pursuant to Rule 706 of the Federal Rules of Evidence by the United States District Court for the Eastern District of New York (Weinstein, J.) estimated that an additional 300,000 asbestos health claimants will file claims with the Trust over time because of Manville's prior conduct of mining asbestos, as well as manufacturing and selling of products containing asbestos.

4. Pursuant to Section 1141 of the Bankruptcy Code, confirmation of the Plan discharged the debtors from all "claims," as defined in Section 101(5) of the Bankruptcy Code, that arose prior thereto; pursuant to Section 524 of the Bankruptcy Code, said discharge operated as an

injunction against, inter alia, the employment of process and all acts to collect on all such claims; pursuant to a separate injunction set forth in the Confirmation Order, all "Persons and Governmental Units" were, among other things, enjoined from commencing, conducting, or continuing any judicial or administrative proceeding to recover on a discharged claim against any of the debtors, or their successors.

5. The United States has identified a number of sites at which it contends that, but for the bar order, Sections 1141 and 524 of the Bankruptcy Code, and the separate injunction entered by the court, one or more of the former debtors could have liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, or Section 7003 of RCRA, 42 U.S.C. § 6973, arising from Manville's activities prior to the Confirmation Date.

6. Both Manville and the United States seek to avoid the necessity of further litigation concerning the scope and effect of the bar order, Sections 1141 and 524 of the Bankruptcy Code, and the injunction, and the effect of said matters on allegedly existing or potential claims of the United States under Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, or Section 7003 of RCRA, 42 U.S.C. § 6973, arising from Manville's actual or asserted Preconfirmation conduct, acts or omissions. Manville and the United States therefore seek, through entering into this

Settlement Agreement, to settle any and all claims the United States might have, absent the bar order, Sections 1141 and 524 of the Bankruptcy Code and the injunction, against Manville under Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, or Section 7003 of RCRA, 42 U.S.C. § 6973, at the Class A Sites, the Class B Sites and the Additional Sites, each as defined herein.

7. The compromise and settlement contained herein is an arm's length settlement, entered in good faith after extensive negotiation between the parties.

8. Manville seeks, to the maximum extent permitted by law, to obtain protection, through the resolution of environmental liabilities for the Class A Sites, the Class B Sites and the Additional Sites, against all contribution claims that have been or may in the future be asserted for environmental response costs by any potentially responsible parties with respect to the Class A Sites, the Class B Sites or the Additional Sites.

II. DEFINITIONS

In this Settlement Agreement the following terms shall have the following meanings:

9. "Additional Sites" has the meaning set forth in Paragraph 54 hereof.

10. "Bankruptcy Case" refers to the Manville bankruptcy proceedings conducted in the Bankruptcy Court and the United States District Court for the Southern District of New York, Case Nos. 82 B 11656 through 82 B 11676.

11. "Bankruptcy Code" means Title 11 of the United States Code as now in effect or hereafter amended and the Federal Rules of Bankruptcy Procedure.

12. "Bankruptcy Court" means the United States Bankruptcy Court for the Southern District of New York.

13. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., as now in effect or hereafter amended, and all rules and regulations promulgated or established thereunder.

14. "Class A Sites" means the following sites: the Commercial Oil Site in Oregon, Ohio; the Compass Industries Site in Tulsa, Oklahoma; the Great Lakes Asphalt Site in Zionsville, Indiana; the Lowry Landfill Site in Arapahoe County, Colorado; the Operating Industries Site in Monterey Park, California; the Petrochem/Ecotek Site in Salt Lake City, Utah; the Seymour Recycling Site in Seymour, Indiana; and the Yellow Water Road Site in Baldwin, Florida, each as described further in Section IV hereof.

15. "Class B Sites" means the following sites: the Coalinga Site in Fresno County, California, the Union

Chemical Site in South Hope, Maine, the Roebling Steel Site in Florence Township, New Jersey and the Ellis Road Site in Jacksonville, Florida, each as described further in Section V hereof.

16. "Confirmation Date" and "Confirmation Order" have the meanings set forth in the Plan.

17. "Covered Substance" means (a) any "hazardous substance" as now or hereafter defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any "pollutant or contaminant" as now or hereafter defined in Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any "solid waste" as now or hereafter defined in Section 1004(27) of RCRA; (d) any substance now or hereafter designated as a hazardous substance under 40 C.F.R. Part 302; (e) any asbestos or asbestos-containing material; (f) petroleum, its derivatives, by-products and other hydrocarbons; and (g) any substance otherwise regulated under or subject to the terms of CERCLA or RCRA.

18. "De Minimis Additional Site" means an Additional Site (a) with respect to which Manville would, absent this Settlement Agreement, be eligible for a de minimis settlement under Section 122(g) of CERCLA or other similar law and (b) which Manville has designated in a notice to the United States as a "De Minimis Additional Site" under the terms of this Settlement Agreement.

19. "De Minimis Settlement Amount" means that amount which Manville would, absent this Settlement Agreement, be liable for under a de minimis settlement agreement under Section 122(g) of CERCLA or other similar law.

20. "DOI" means the United States Department of the Interior or any successor thereto.

21. "Disposal Act" means any handling, storage, treatment, transportation, disposal, discharge, emission, release or threatened release of a Covered Substance, including a "release" as defined in Section 101(22) of CERCLA and a "disposal" as defined in Section 1004(3) of RCRA. For purposes of this Settlement Agreement, any subsequent migration of a Covered Substance arising out of an initial Disposal Act is considered to be part of such initial Disposal Act and is not considered to be a separate Disposal Act independent from such initial act.

22. "EPA" means the United States Environmental Protection Agency or any successor thereto.

23. "Facility" has the meaning set forth in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

24. "Manville" means Manville Corporation; Manville International Corporation; Manville Export Corporation; Johns-Manville International Corporation; Schuller International, Inc., f.k.a. Manville Sales Corporation (successor by merger to Johns-Manville

Corporation), f.k.a. Johns-Manville Sales Corporation (successor by merger to Manville Building Materials Corporation, Manville Products Corporation and Manville Service Corporation); Manville International Canada, Inc.; Manville Investment Corporation; Manville Properties Corporation; Riverwood International USA, Inc., f.k.a. Riverwood International Corporation, f.k.a. Manville Forest Products Corporation; Allan-Dean Corporation; Ken-Caryl Ranch Corporation; Johns-Manville Idaho, Inc.; Manville Canada Service Inc.; SAL Contract & Supply, Inc., f.k.a Sunbelt Contractors, Inc.; and any predecessor or successor thereto.

25. "Manville Natural Resource Damages Liability" has the meaning set forth in Paragraph 56 hereof.

26. "Manville Response Cost Liability" has the meaning set forth in Paragraph 56 hereof.

27. "Manville Owned Site" means any Facility which was owned or operated by Manville as of the Confirmation Date, and any and all property or resource adjacent to or in the vicinity of such Facility, to the extent such property or resource has been, or may in the future be, contaminated or threatened by any Covered Substance emanating or originating from or existing on such Facility.

28. "Manville Share" has the meaning set forth in Paragraph 56 hereof.

29. "MONBAR" has the meaning set forth in Paragraph 57(f) hereof.

30. "MONBAR Shared Cost Amount" means 45% of the out-of-pocket cost of a MONBAR arranged for by a party hereto with respect to any Additional Site; provided that in no event shall the "MONBAR Shared Cost Amount" for any Additional Site exceed 5% of the aggregate Manville Response Cost Liability relating to such Additional Site.

31. "Natural Resource Damages" means damage for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction or loss.

32. "Natural Resources Trustees" shall mean the DOI, the United States Department of Commerce (National Oceanic and Atmospheric Administration) and the United States Department of Agriculture.

33. "Plan of Reorganization" or "Plan" refers to Manville's Second Amended and Restated Plan of Reorganization, as confirmed.

34. "Postconfirmation" means the time period subsequent to the Confirmation Date. "Preconfirmation" means the time period prior to the Confirmation Date.

35. "Preconfirmation Disposal" means a Disposal Act by Manville prior to the Confirmation Date.

36. "RCRA" refers to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., as now in effect

or hereafter amended, and all rules and regulations promulgated or established thereunder.

37. "Relevant Law" means Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and Section 7003 of RCRA, 42 U.S.C. § 6973, and the respective rules and regulations promulgated or established thereunder, as each may be amended from time to time.

38. "Response Costs" means the costs of "removal" and "remedial action" as those terms are defined in Sections 101(23) and (24) of CERCLA, 42 U.S.C. §§ 9601(23) and (24), including without limitation, all direct and indirect costs of management, study, removal, remedial action, interest, costs, attorneys' and environmental consultants' or investigators' fees.

39. "Settlement Agreement" means this Stipulation and Order of Settlement and Dismissal.

40. "United States" means the United States of America and any department, agency, branch, instrumentality or division thereof.

III. MANVILLE OWNED SITES

41. No claim that the United States might have had under any Relevant Law with respect to any Manville Owned Site will be deemed to be or treated as discharged under Section 1141 of the Bankruptcy Code by the

confirmation of the Plan of Reorganization, barred by the failure of the United States to file a proof of claim with respect thereto, or subject to the injunction or Section 524 of the Bankruptcy Code. The United States may pursue enforcement actions or proceedings with respect to such Manville Owned Sites in the manner, and by the administrative or judicial tribunals, in which the United States could have pursued enforcement actions or proceedings if the Bankruptcy Proceedings had never been commenced. Manville may defend such enforcement actions or proceedings, if any, on any grounds, except those arising out of the Bankruptcy Case.

IV. CLASS A SITES

42. With respect to the Commercial Oil Site in Oregon, Ohio, including all operable units thereof, and any and all property or resource adjacent to or in the vicinity of such Facility, to the extent such property or resource has been, or may in the future be, contaminated or threatened by any Covered Substance emanating or originating from or existing on such Facility, Manville shall pay the United States on behalf of EPA the sum of $147,400, on behalf of DOI the sum of $2,849 and on behalf of the other Natural Resources Trustees the sum of $0 within 30 days after the order of the Court approving the Settlement

Agreement becomes a Final Order (as defined in Paragraph 83).

43. With respect to the Compass Industries Site in Tulsa, Oklahoma, including all operable units thereof, and any and all property or resource adjacent to or in the vicinity of such Facility, to the extent such property or resource has been, or may in the future be, contaminated or threatened by any Covered Substance emanating or originating from or existing on such Facility, Manville shall pay the United States on behalf of EPA the sum of $4,800 and on behalf of the Natural Resources Trustees the sum of $0 within 30 days after the order of the Court approving the Settlement Agreement becomes a Final Order.

44. With respect to the Great Lakes Asphalt Site in Zionsville, Indiana, including all operable units thereof, and any and all property or resource adjacent to or in the vicinity of such Facility, to the extent such property or resource has been, or may in the future be, contaminated or threatened by any Covered Substance emanating or originating from or existing on such Facility, Manville shall pay the United States on behalf of EPA the sum of $14,500 and on behalf of DOI the sum of $930 and on behalf of the other Natural Resources Trustees the sum of $0 within 30 days after the order of the Court approving the Settlement Agreement becomes a Final Order.

45. With respect to the Lowry Landfill Site in Arapahoe County, Colorado, including all operable units thereof, and any and all property or resource adjacent to or in the vicinity of such Facility, to the extent such property or resource has been, or may in the future be, contaminated or threatened by any Covered Substance emanating or originating from or existing on such Facility, Manville shall pay the United States on behalf of EPA the sum of $750,000 and on behalf of the Natural Resources Trustees the sum of $0 within 30 days after the order of the Court approving the Settlement Agreement becomes a Final Order.

46. With respect to the Operating Industries Site in Monterey Park, California, including all operable units thereof, and any and all property or resource adjacent to or in the vicinity of such Facility, to the extent such property or resource has been, or may in the future be, contaminated or threatened by any Covered Substance emanating or originating from or existing on such Facility, Manville shall pay the United States on behalf of EPA the sum of $81,000 and on behalf of the Natural Resources Trustees the sum of $0 within 30 days after the order of the Court approving the Settlement Agreement becomes a Final Order.

47. With respect to the Petrochem/Ecotek Site in Salt Lake City, Utah, including all operable units thereof,

and any and all property or resource adjacent to or in the vicinity of such Facility, to the extent such property or resource has been, or may in the future be, contaminated or threatened by any Covered Substance emanating or originating from or existing on such Facility, Manville shall pay the United States on behalf of EPA the sum of $87,090 and on behalf of the Natural Resources Trustees the sum of $0 within 30 days after the order of the Court approving the Settlement Agreement becomes a Final Order.

48. With respect to the Seymour Recycling Site in Seymour, Indiana, including all operable units thereof, and any and all property or resource adjacent to or in the vicinity of such Facility, to the extent such property or resource has been, or may in the future be, contaminated or threatened by any Covered Substance emanating or originating from or existing on such Facility, Manville shall pay the United States on behalf of EPA the sum of $41,100 and on behalf of the Natural Resources Trustees the sum of $0 within 30 days after the order of the Court approving the Settlement Agreement becomes a Final Order.

49. With respect to the Yellow Water Road Site in Baldwin, Florida, including all operable units thereof, and any and all property or resource adjacent to or in the vicinity of such Facility, to the extent such property or resource has been, or may in the future be, contaminated or threatened by any Covered Substance emanating or originating

from or existing on such Facility, Manville shall pay the United States on behalf of EPA the sum of $3,900 and on behalf of the Natural Resources Trustees the sum of $0 within 30 days after the order of the Court approving the Settlement Agreement becomes a Final Order.

V. CLASS B SITES

50. With respect to the Coalinga Site in Fresno County, California, including all operable units thereof, and any and all property or resource adjacent to or in the vicinity of such Facility, to the extent such property or resource has been, or may in the future be, contaminated or threatened by any Covered Substance emanating or originating from or existing on such Facility, Manville shall pay the United States on behalf of EPA the sum of $500,000 within 30 days after the order of the Court approving the Settlement Agreement becomes a Final Order.

51. With respect to the Ellis Road Site in Jacksonville, Florida, including all operable units thereof, and any and all property or resource adjacent to or in the vicinity of such Facility, to the extent such property or resource has been, or may in the future be, contaminated or threatened by any Covered Substance emanating or originating from or existing on such Facility, Manville shall pay the United States on behalf of EPA the sum of $500 within 30

days after the order of the Court approving the Settlement Agreement becomes a Final Order.

52. With respect to the Roebling Steel Site in Florence Township, New Jersey, including all operable units thereof, and any and all property or resource adjacent to or in the vicinity of such Facility, to the extent such property or resource has been, or may in the future be, contaminated or threatened by any Covered Substance emanating or originating from or existing on such Facility, Manville shall pay the United States on behalf of EPA the sum of $1,900 within 30 days after the order of the Court approving the Settlement Agreement becomes a Final Order.

53. With respect to the Union Chemical Site in South Hope, Maine, including all operable units thereof, and any and all property or resource adjacent to or in the vicinity of such Facility, to the extent such property or resource has been, or may in the future be, contaminated or threatened by any Covered Substance emanating or originating from or existing on such Facility, Manville shall pay the United States on behalf of EPA the sum of $34,900 within 30 days after the order of the Court approving the Settlement Agreement becomes a Final Order.

VI. ADDITIONAL SITES

A. General

54. The procedures set forth in this Section shall apply to (a) any alleged liabilities and obligations of Manville to the United States under Relevant Law, based on, arising out of, or related to Facilities, other than Manville Owned Sites, Class A Sites or Class B Sites, where such alleged liabilities or obligations are based on, arise out of or relate to a Preconfirmation Disposal, and (b) any alleged liabilities and obligations of Manville under Relevant Law for any Natural Resource Damages relating to any Class B Site, where such alleged liability or obligation is based on, arises out of or relates to a Preconfirmation Disposal. The term "Additional Site" shall refer to (i) each Facility described in clause (a) of the proceeding sentence, including all operable units thereof, and any and all property or resource adjacent to or in the vicinity of such Facility, to the extent such property or resource has been, or may in the future be, contaminated or threatened by any Covered Substance emanating or originating from or existing on such Facility and (ii) each Class B Site, but only to the extent of any alleged liabilities or obligations for Natural Resource Damages arising out of or relating to such Class B Site.

55. The United States agrees that it will not pursue Manville with respect to any civil judicial or

administrative liability, including for injunctive relief, under CERCLA or Section 7003 of RCRA, based on or arising out of a Preconfirmation Disposal with respect to an Additional Site other than pursuant to the procedures set forth herein. In consideration for such agreement by the United States, Manville agrees that, notwithstanding the effect of any discharge received by Manville as a result of the confirmation of the Plan or otherwise as a result of the Bankruptcy Case, it will pay the United States 55% of any Manville Response Cost Liability or Manville Natural Resource Damages Liability for such site as agreed to or determined by the procedures set forth herein; provided that with respect to a De Minimis Additional Site Manville may instead elect to pay the De Minimis Settlement Amount with respect to such site.

56. The percentage representing Manville's share of the total amount of Response Costs and Natural Resource Damages, if applicable, relating to an Additional Site shall be determined in accordance with the procedures set forth in Paragraph 57 below and shall be referred to as the "Manville Share." The dollar amount equal to the product of the Manville Share and the total amount of Response Costs (other than those incurred by a Natural Resources Trustee) relating to an Additional Site shall be determined in accordance with the procedures set forth in Paragraph 64 below and shall be referred to as the "Manville Response Cost Liability". The

dollar amount equal to the product of the Manville Share and the total amount of Natural Resource Damages, if applicable, and of Response Costs actually incurred by a Natural Resources Trustee, if any, relating to an Additional Site shall be determined in accordance with the procedures set forth in Paragraph 65 below and shall be referred to as the "Manville Natural Resource Damages Liability". Manville reserves all its rights and defenses in connection with any determination of a Manville Response Cost Liability, a Manville Natural Resource Damages Liability or a Manville Share except for such rights and defenses as may arise out of the Bankruptcy Case.

B. Manville Share/ MONBAR

57. The Manville Share for an Additional Site shall be determined as follows:

a. Upon a good faith determination by Manville that it may have liability to the United States with respect to an Additional Site, Manville may so notify the United States in writing. So long as it has not previously received an Initial Notification letter with respect to such Additional Site from the United States pursuant to Paragraph 57(c) below, Manville may designate such a notification to the United States as an Initial Notification and in such case the date such a notification is received by the United States shall be referred to as the Initial Date.

b. Manville may propose, in a written notification to the United States, a Manville Share with respect to any Additional Site. So long as Manville has not previously received an Initial Notification letter with respect to such Additional Site from the United States pursuant to Paragraph 57(c) below, Manville may designate such a proposal an Initial Notification and in such case the date such designation is received by the United States shall be referred to as the Initial Date. In the event Manville proposes a Manville Share but does not designate such a proposal as an Initial Notification, the parties may negotiate towards an agreement as to the Manville Share. If such an agreement is reached, the date of such agreement shall be the Concluding Date. If such an agreement is not reached, the remaining terms of this Settlement Agreement shall apply to the resolution of any liability relating to such Additional Site as if Manville had never proposed a Manville Share to the United States.

c. If the United States comes to a good faith determination that Manville may have liability for an Additional Site, the United States shall so notify Manville in writing in the ordinary course of its notification of other potentially responsible parties. Such a notification may take the form of a letter sent pursuant to Section 106 or 107 of CERCLA. If such notification or letter specifies that (i) a remedial investigation/feasibility study has been

completed with respect to such Additional Site or (ii) the United States in good faith believes that it has sufficient information to support a determination of the Manville Share, then such notification shall be referred to as the Initial Notification and the date it is received by Manville shall be referred to as the Initial Date.

Until a notification is received from the United States which states either (i) or (ii) above or until Manville designates a notification as an Initial Notification pursuant to Paragraphs 57(a) or (b) above, there shall be no Initial Notification or Initial Date. In no event shall there be more than one Initial Notification for any particular Additional Site. In the event the United States has also made an initial determination as to the Manville Share for such Additional Site, the Initial Notification may set forth such initial determination and the basis therefor.

d. If an Initial Notification contains an initial determination by the United States or Manville of the Manville Share for such Additional Site, the party that received the Initial Notification shall notify the other party within 60 days of the Initial Date whether the receiving party concurs with such initial determination. If the party that received the Initial Notification does concur, or if such party fails to provide any notice to the other party, then the Manville Share for such Additional

Site shall be as stated in the Initial Notification and the Concluding Date shall be 60 days after the Initial Date. If the party that received the Initial Notification notifies the other party that it does not concur, then the parties shall have an additional 60 days thereafter in which to attempt to negotiate an agreement as to the Manville Share. If such an agreement is reached, the date of such agreement shall be the Concluding Date. If no such agreement is reached, then the date 120 days after the Initial Date shall be the Triggering Date.

e. If an Initial Notification does not contain a determination of Manville Share, then the Initial Date shall be the Triggering Date.

f. Within 60 days after the Triggering Date, Manville shall notify the United States whether it is prepared to arrange and pay for an independent Manville Only Non-Binding Allocation of Responsibility ("MONBAR") for the Additional Site that is the subject of the Initial Notice relating to such Triggering Date, in accordance with the procedures set forth below. If Manville notifies the United States that it is willing to arrange and pay for such a MONBAR, then Manville shall promptly commence making such arrangements. The United States agrees to reasonably cooperate with Manville on the performance of the MONBAR. If a final Manville Share is determined for such Additional Site subsequent to the performance of a MONBAR paid for by

Manville, any payments required to be made to the United States pursuant to Paragraph 63, 64, or 65 below shall be reduced by the MONBAR Shared Cost Amount for such Additional Site.

If (x) Manville notifies the United States that it is not willing to arrange and pay for a MONBAR for such Additional Site, then within 120 days of the receipt of such notification, or (y) Manville does not send a notification as to whether it is willing to arrange and pay for such a MONBAR during such 60 days, then within 120 days after the Triggering Date, the United States shall notify Manville whether the United States will arrange and pay for such a MONBAR. If the United States notifies Manville that it is willing to arrange and pay for such a MONBAR, then it shall promptly commence making such arrangements. If a final Manville Share is determined for such Additional Site subsequent to the performance of a MONBAR paid for by the United States, any payments required to be made to the United States pursuant to Paragraph 63, 64, or 65 below shall be increased by the MONBAR Shared Cost Amount for such Additional Site. Manville agrees to reasonably cooperate with the United States on the performance of the MONBAR. In no event shall the cost of a MONBAR be considered to be Response Costs or Natural Resource Damages within the meaning of this Settlement Agreement. If the United States notifies Manville that the United States is not willing to

arrange and pay for such a MONBAR, or if the United States does not send a notification within such 60 day period, then there shall be a final 30-day period thereafter in which the parties may seek to negotiate an agreement as to the Manville Share. If such an agreement is reached, the date of the agreement shall be the Concluding Date. If no such agreement is reached, the final day of the 30-day period shall be the Concluding Date and such Additional Site shall become an Excluded Site with the effect set forth below.

g. If either Manville or the United States undertakes a MONBAR, then upon completion of such MONBAR the party which undertook the MONBAR shall notify the other party of the proposed determination of the Manville Share resulting from the MONBAR. The date such notification is received is referred to as the MONBAR Date. Each party shall then have 60 days to notify the other party whether it concurs with such determination.

(1) If both the United States and Manville concur with such proposed determination, then the proposed determination shall be deemed to be the Manville Share for such Additional Site and the Concluding Date shall be 60 days after the MONBAR Date.

(2) If neither the United States nor Manville concurs with such proposed determination, then there shall be a final 30-day period

commencing 60 days after the MONBAR Date for the parties to make a final attempt to reach agreement on the Manville Share for such Additional Site. If such an agreement is reached, the date of such agreement shall be the Concluding Date. If no such agreement is reached within such 30-day period, then such Additional Site shall become an Excluded Site with the effect set forth below and the Concluding Date shall be 90 days after the MONBAR Date.

(3) If either the United States or Manville, but not both, concurs with such proposed determination, then the party concurring and the party not concurring shall be referred to as the "Concurring Party" and the "Non-Concurring Party," respectively, for such Additional Site. The Concurring Party shall have the option, within its absolute nonreviewable discretion, of either having such Additional Site become an Excluded Site or having the Manville Share determined by the Court Resolution Procedure set forth below. Within 90 days after the MONBAR Date, the Concurring Party shall notify the Non-Concurring Party which of these options it has selected. If it selects the option of having the Additional Site become an Excluded Site, then the date of

such notification shall be the Concluding Date. If it invokes the Court Resolution Procedure, then the date a final judgment is entered by the Court shall be the Concluding Date.

Pursuant to agreement of the parties or the MONBAR process, a Manville Share may be established relating to Natural Resource Damages at an Additional Site and a different Manville Share may be established relating to Response Costs at such Additional Site. In the event that two Manville Shares are established with respect to an Additional Site, the procedures set forth in this Agreement for making payments for either Manville Response Cost Liability or Manville Natural Resource Damages Liability shall be invoked immediately upon determination of the Manville Share with respect to such Response Costs or Natural Resource Damages and shall not await the determination of the other Manville Share with respect to such Additional Site.

58. The party that has agreed to arrange and pay for the MONBAR shall select one of the following persons to perform such MONBAR: EnDispute, Clean Sites, Judicial Arbiter Group, or any other person mutually acceptable to the parties. Such person shall determine, in accordance with the factors described in Section 122(e)(3) of CERCLA, including volume, toxicity, mobility, strength of evidence and aggravating factors, and in any further regulation or

guidance documents or directives promulgated or established thereunder or under any other provision of CERCLA or RCRA, and based on all relevant available information, the Manville Share for the Additional Site at issue. The party electing to prepare and pay for a MONBAR shall cause a report containing a determination of the Manville Share and the basis therefor to be provided to the other party and shall use its best efforts to cause such report to be delivered within 120 days after it is commenced. The performance of the MONBAR shall be deemed a part of this action, and the party that has arranged for the MONBAR shall therefore have the authority to obtain information from other parties pursuant to Rule 45 of the Federal Rules of Civil Procedure.

59. The United States District Court for the Southern District of New York shall retain jurisdiction to determine the Manville Share in the event that the Court Resolution Procedure is invoked for an Additional Site. Unless otherwise directed by the Court, the Concurring Party shall file an adversary complaint pursuant to Rule 7001 et seq. of the Federal Rules of Bankruptcy Procedure initiating the Court Resolution Procedure and seeking a determination of the Manville Share and only such a determination. The United States and Manville consent to, and by approving this Settlement Agreement the Court orders, the withdrawal of reference pursuant to 28 U.S.C. § 157(d) with respect to

such adversary proceeding. Thereafter, the proceeding shall be conducted in accordance with the Federal Rules of Bankruptcy Procedure and the parties reserve all rights of appeal. The parties stipulate that the MONBAR report may be introduced in evidence in such proceeding and shall be presumed accurate unless the Non-Concurring Party rebuts the content thereof. Neither the decision to arrange and pay for a MONBAR nor the submission of a MONBAR to another party hereto or to the Court shall be construed to be an admission of liability for any purpose or an acknowledgment by Manville that a release or a threatened release constitutes imminent or substantial endangerment to the public health or welfare or the environment.

C. **Excluded Sites**

60. A Class B Site may never become an Excluded Site except with respect to claims for Natural Resource Damages. Any Facility that becomes an Excluded Site shall, except for the provisions relating to payment of a MONBAR and except for all provisions relating in any manner to Response Cost claims at Class B Sites, no longer be subject in any manner to the terms of this Settlement Agreement. In such case, the United States shall have those claims against Manville with respect to such an Excluded Site as it would have had this Settlement Agreement never been made, and Manville shall have whatever defenses it would have had, including defenses based on the Bankruptcy Code or the

Bankruptcy Case, if this Settlement Agreement had never been made.

D. **Statute of Limitations**

61. Manville agrees that any otherwise applicable statute of limitations with respect to any claims of the United States as to any Additional Site subject to the procedures set forth above shall be tolled during the period from the Initial Date until 60 days following the Concluding Date. This tolling agreement shall remain in effect with respect to any Additional Site unless and until such Additional Site shall have become an Excluded Site.

E. **Terminating Notice**

62. In the event that either Manville or the United States is a Non-Concurring Party as to two or more Additional Sites, then the other party shall have the right, within its absolute discretion, at any time thereafter, to provide a terminating notice to the other party. In the event such a terminating notice is provided, then all Additional Sites, except those for which a Manville Share has already been determined or is in the process of being determined pursuant to the procedures set forth herein, shall become Excluded Sites.

F. **Manville Liability**

63. It is understood that the United States will incur Response Costs in, among other things, identifying and investigating potential Additional Sites. If Manville has

not received a request for reimbursement of Response Costs pursuant to Paragraph 64 hereof within 90 days of the determination of a Manville Share with respect to an Additional Site pursuant to Paragraph 57 hereof, then Manville may make a payment of $10,000 to the United States on behalf of the EPA to cover all or a portion of the Response Costs with respect to such Additional Site. If Manville has not received an assessment of Natural Resource Damages pursuant to Paragraph 65 hereof within 90 days of the determination of a Manville Share with respect to an Additional Site pursuant to Paragraph 57 hereof, then Manville may make a payment of $10,000 to be divided among one or more Natural Resources Trustees, as appropriate, to cover all or a portion of any Natural Resource Damages with respect to such Additional Site.

64. Manville shall, after the Manville Share is determined for an Additional Site, make payments relating to such an Additional Site on account of its liability for Response Costs as follows:

(a) First, the United States shall prepare and provide to Manville an itemized statement describing in detail any Response Costs actually incurred by the United States (other than by a Natural Resources Trustee) or by a responsible private party with respect to such Additional Site. The United States may, except with respect to a De

Minimis Additional Site, prepare and provide more than one such itemized statement with respect to any Additional Site.

(b) Second, the aggregate amount of all such Response Costs multiplied by the Manville Share for such Additional Site shall be referred to as the "Manville Response Cost Liability" with respect to such Additional Site.

(c) Third, subject to Paragraph 67 below, Manville shall pay to the United States on behalf of the EPA or to a third party in accordance with the written direction of the United States the sum of (i) 55% of the Manville Response Cost Liability at any Additional Site, minus (or plus, as applicable) (ii) any MONBAR Shared Cost Amount with respect to such Additional Site pursuant to Paragraph 57(f) above, minus (iii) any payment previously made with respect to Response Costs at such Additional Site pursuant to Paragraph 63 which has not previously been deducted.

65. Manville shall, after the Manville Share has been determined for an Additional Site or Class B Site, make payments relating to such an Additional Site on account of its liability for Natural Resource Damages as follows:

(a) First, within 60 days after a Natural Resources Trustee has (i) completed an assessment of the Natural Resource Damages with respect to any Additional Site or Class B Site or (ii) prepared an itemized statement describing in detail any Response Costs actually incurred by

such Natural Resources Trustee with respect to any Additional Site or Class B Site, such Natural Resources Trustee shall send to Manville a copy of such assessment and/or such itemized statement. The Natural Resources Trustees may, except with respect to a De Minimis Additional Site, prepare and provide more than one such itemized statement with respect to an Additional Site or a Class B Site. The assessments referred to herein shall be prepared in accordance with the provisions of Section 107(f) of CERCLA.

(b) Second, the aggregate amount of (i) the Natural Resource Damages set forth in an assessment referred to in clause (a) above and (ii) the Response Costs actually incurred by a Natural Resources Trustee as set forth in an itemized statement referred to in clause (a) above, multiplied by the Manville Share for such Additional Site or Class B Site shall be referred to as the "Manville Natural Resource Damages Liability" with respect to such assessment or statement.

(c) Third, subject to paragraph 67 below, Manville shall pay to the United States on behalf of the appropriate Natural Resources Trustee the sum of (i) 55% of the Manville Natural Resource Damages Liability as determined in clause (b) above, minus (or plus, as applicable) (ii) any MONBAR Shared Cost Amount with respect to such Additional Site or Class B Site pursuant to

paragraph 57(f) above, unless the MONBAR Shared Cost Amount was previously subtracted (or added, as applicable) from the Manville Response Cost Liability paid under Paragraph 64(c) above, minus (iii) any payment previously made with respect to Natural Resource Damages at such Additional Site pursuant to Paragraph 63 which has not previously been deducted.

66. Any payment for Manville Response Cost Liability relating to an Additional Site shall be made within 30 days after Manville receives an itemized statement referred to in Paragraph 64(a) and any payment for Manville Natural Resource Damages Liability relating to an Additional Site or Class B Site shall be made within 30 days after Manville receives an assessment or an itemized statement as described in Paragraph 65(a); provided that in no event shall any payment be required prior to the date 60 days after the Concluding Date for such Additional Site. Any payment made by Manville pursuant to Paragraph 64 or 65 for either Manville Response Cost Liability or for Manville Natural Resource Damages Liability shall be allocated to the Annual Cap in the same order in which the itemized statement or assessment associated with such liability is sent to Manville; provided that such allocation shall not have any impact on any rights or defenses Manville may have pursuant to Paragraphs 56 and 68 hereof. In no event shall Manville be required to make any payment hereunder except to the United States or to any person as directed by the United

States in accordance with Paragraph 64(c) above. The United States shall have the sole responsibility for determining the allocation, if any, between the United States and any private parties of all Manville Response Cost Liability payments made by Manville pursuant to this Settlement Agreement.

G. Annual Cap

67. Notwithstanding the provisions of Paragraphs 64 and 65, Manville shall not be obligated to make payments (including any interest payments) to or at the direction of the United States during any calendar year in excess of $850,000 (the "Annual Cap"). If Manville would otherwise be required pursuant to the terms of this Settlement Agreement to make payments during any calendar year which, together with any applicable interest, would exceed the Annual Cap, the excess of such payments (including any interest) over the Annual Cap shall be deferred until the following calendar year and shall, subject to the Annual Cap, be payable no later than January 30 of such calendar year. Any unpaid amounts shall continue to be deferred until such time as they are paid in full in accordance with Paragraphs 64 and 65. When payments are deferred to a subsequent year, Manville shall pay interest from 30 days after the date a request for payment is received pursuant to the terms of this Settlement Agreement, but in no event earlier than the date on which the order of the Court approving the

Settlement Agreement becomes final, until the date of payment. The rate of interest paid shall be the rate specified for interest on advances made to the Superfund under the Hazardous Substance Superfund Act, 26 U.S.C. § 9507, compounded annually. For purposes of applying such section to payments under this Settlement Agreement, the term "comparable maturity" shall be determined with reference to the date on which interest accruing under this Settlement Agreement commences.

H. Miscellaneous

68. The United States agrees that it will not seek to order Manville to satisfy in a manner other than as provided above any liability it may be determined to have with respect to any Class A Site, any Class B Site or any potential or actual Additional Site. Manville shall retain any and all rights and defenses it has under any law, except for such rights and defenses as may arise under the Bankruptcy Code or the Bankruptcy Case, including any rights it may have to participate in and review all aspects of the identification of and activities relating to an Additional Site, and the right to review, audit or object to the amount and type of Response Costs or Natural Resource Damages submitted for payment to Manville by the United States.

VII. PAYMENT AND DISTRIBUTION INSTRUCTIONS

69. Any payments due pursuant to this Settlement Agreement shall be transmitted by Manville in the following manner:

(a) if to the EPA, unless otherwise agreed between the parties, by mailing to the USEPA Superfund, P.O. Box 371003M, Pittsburgh, Pennsylvania 15251, a certified or cashier's check made payable to the EPA-Hazardous Substances Superfund. Any such check should contain a reference to this Agreement and to the site or sites to which the payment relates.

(b) if to the DOI, unless otherwise agreed between the parties, by mailing to the DOI, United States Fish & Wildlife Service, 4401 North Fairfax Drive, Arlington, Virginia 22203, a certified or cashier's check made payable to the DOI. Any such check should contain a reference to this Agreement and to the site or sites to which the payment relates.

(c) if to the Department of Commerce, National Oceanic and Atmospheric Administration, unless otherwise agreed between the parties, by mailing to Craig O'Connor, Esq., Office of General Counsel, National Oceanic and Atmospheric Administration, 14th Street and Independence Avenue, S.W., Room 4622 South Building, Washington, D.C. 22050-1400, a certified or cashier's check made payable to the National Oceanic and Atmospheric Administration. Any

such check should contain a reference to this Agreement and to the site or sites to which the payment relates.

(d) if to the Department of Agriculture, unless otherwise agreed between the parties, by mailing to Chief, Forest Service, United States Forest Service, 14th Street and Independence Avenue, S.W., Washington, D.C. 22050-1400, a certified or cashier's check made payable to United States Forest Service. Any such check should contain a reference to this Agreement and to the site or sites to which the payment relates.

Copies of all records of such payments shall be transmitted to the relevant parties in the manner provided in Paragraph 81.

VIII. COVENANT NOT TO SUE

70. In consideration of the payments that will be made pursuant to this Settlement Agreement, the United States covenants not to sue or assert any civil judicial or administrative claim for relief against Manville with respect to any civil judicial or administrative liability, including for injunctive relief, under CERCLA or Section 7003 of RCRA, based on or arising out of a Preconfirmation Disposal, except as specifically provided in this Settlement Agreement.

71. The covenant not to sue contained in the preceding Paragraph shall also apply to Manville's successors and assigns, officers, directors, employees, trustees, corporate parents, shareholders, subsidiaries, affiliates and partners but only to the extent that the alleged liability of the successor or assign, officer, director, employee or trustee, corporate parent, shareholder, subsidiary, affiliate or partner is based solely on its status as and in its capacity of a successor or assign, officer, director, employee, trustee, corporate parent, shareholder, subsidiary, affiliate or partner of Manville.

72. This covenant not to sue extends only to Manville and the persons described in Paragraph 71 above and does not extend to any other person. Nothing in this Settlement Agreement is intended as a covenant not to sue or a release from liability for any person or entity other than Manville, the persons described in Paragraph 71 above and the United States. The United States and Manville expressly reserve all claims, demands and causes of action either judicial or administrative, past or future, in law or equity, which the United States or Manville may have against any person, firm, corporation, or other entity not a party to this Settlement Agreement and not described in Paragraph 71 above for any matter arising at or relating in any manner to the sites or claims addressed herein.

73. Notwithstanding the foregoing, neither the covenant not to sue nor any other provision of this Agreement shall apply to or affect (i) any claim based on criminal liability; or (ii) any claim arising from Postconfirmation acts, omissions, or conduct of Manville; provided that for purposes of this Paragraph 73 a "Postconfirmation act, omission or conduct" shall not include a failure to act with respect to a Preconfirmation act, omission or conduct.

74. Nothing in this Settlement Agreement shall be deemed to limit the response authority of the United States under Section 104 of CERCLA, 42 U.S.C. § 9604, or any other applicable law or regulation, or to alter the applicable legal principles governing judicial review of the selection or adequacy of any response action taken by the United States pursuant to that authority. Nothing in this Settlement Agreement shall be deemed to limit the information gathering authority of the United States under Sections 104, 106, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9606, and 9622, or any other applicable law or regulation, or to excuse Manville from any disclosure or notification requirements imposed by any Relevant Law; provided, however, that Manville reserves any privileges or rights to withhold information pursuant to applicable law.

75. This Settlement Agreement in no way impairs the scope and effect of Manville's rights under Sections

1141 and 524 of the Bankruptcy Code, the bar orders or the injunction as to any claims, as defined in 11 U.S.C. § 101(5), that are not specifically addressed in this Settlement Agreement.

76. Manville hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Class A Sites, the Class B Sites or the Additional Sites, except as specifically provided in this Settlement Agreement. This covenant not to sue includes, but is not limited to, any direct or indirect claim for reimbursement from the Hazardous Substances Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507), Sections 106(b)(2), 111, 112, 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611, 9612, 9613, or any other provision of Relevant Law, any claim against the United States including any department, agency or instrumentality of the United States under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, related to the Class A Sites, the Class B Sites or the Additional Sites, or any claims arising out of response activities at the Class A Sites, the Class B Sites or the Additional Sites. Nothing in this Settlement Agreement shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

IX. EFFECT OF THE SETTLEMENT

77. Except as provided in Paragraphs 71 and 72, nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement.

78. This settlement is entered into by the parties in good faith following extensive arms length negotiations and represents a fair and reasonable resolution of the matters addressed herein. The United States acknowledges that Manville is entering into this settlement and agreeing to pay substantial sums for potential liabilities arising from Preconfirmation Disposals, notwithstanding the discharge and discharge injunction which Manville received in the Bankruptcy Case, because, among other things, of Manville's interest in obtaining protection from claims that may be asserted in the future in connection with the matters addressed herein by either the United States or in contribution by other parties. The United States agrees that by entering into this Agreement and making the payments provided for in Sections IV and V herein, Manville will have resolved any and all potential civil and administrative liability to the United States under CERCLA and Section 7003 of RCRA with respect to the Class A Sites and, except for claims for Natural Resources Damages, with respect to the Class B Sites. Accordingly,

the parties intend, and this Agreement shall be construed, to provide Manville such protection from contribution actions or claims with respect to the Class A Sites and, except for claims for Natural Resources Damages, with respect to the Class B Sites, to the maximum extent provided pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or any other statutes or legal doctrines which provide for contribution protection under the circumstances set forth herein. The parties intend, and this Agreement shall be construed, to provide Manville, upon payment of amounts to or at the direction of the United States with respect to an Additional Site in accordance with the provisions set forth herein, such protection from contribution actions or claims with respect to Additional Sites to the maximum extent provided pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2), or any other statutes or legal doctrines which provide for contribution protection under the circumstances set forth herein.

79. Manville agrees that with respect to any suit or claim for contribution first brought against it after the effective date of this Settlement Agreement for matters related to this Settlement Agreement, it will notify the United States within 30 days of service of the complaint upon it. In addition, in connection with such suit or claim, Manville shall notify the United States within 30 days of service or receipt of any Motion for Summary

Judgment and within 30 days of receipt of any order from a court setting a case for trial.

80. This Settlement Agreement in no way impairs the scope and effect of the Debtors' discharge under 11 U.S.C. as to any third parties and as to any claims, as defined in 11 U.S.C. § 101(5), that are not addressed by this Settlement Agreement.

X. NOTICES AND SUBMISSIONS

81. Whenever, under the terms of this Settlement Agreement, written notice is required to be given, or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Settlement Agreement with respect to the United States, EPA, the Natural Resources Trustees and Manville, respectively.

a. As to the United States:

Joel M. Gross, Esq.
Environmental Enforcement Section
Land and Natural Resources Division
U.S. Department of Justice
10th and Pennsylvania Avenue, N.W.
Washington, D.C. 20530

b. As to DOI:

Shelly L. Hall, Esq.
Attorney Advisor
Office of the Solicitor
Conservation and Wildlife
Division, MS-6560
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

c. As to EPA:

John Wheeler, Esq.
Office of Enforcement
Superfund
Mail Code 2244
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

d. As to the Department of Commerce, National Oceanic and Atmospheric Administration:

Craig O'Connor, Esq.
Office of General Counsel
National Oceanic and Atmospheric
Administration
14th Street and Independence
Avenue, S.W.
Room 4622 South Building
Washington, D.C. 22050-1400

e. As to the Department of Agriculture:

Bettina Poirier, Esq.
Deputy Assistant General Counsel
for Pollution Activities
United States Department of
Agriculture
14th Street and Independence
Avenue, S.W.
Room 4622 South Building
Washington, D.C. 22050-1400

and

Mr. Bill Opfer
Hazardous Materials Program Manager
United States Department of
Agriculture
14th Street and Independence
Avenue, S.W.
Room 4622 South Building
Washington, D.C. 22050-1400

f. As to Manville:

Bruce D. Ray, Esq.
Manville Corporation
717 17th Street
Denver, Colorado 80202
Telephone: (303) 978-3527
Telecopy: (303) 978-2832

with a copy to:

Lowell Gordon Harriss, Esq.
Davis Polk & Wardwell
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4472
Telecopy: (212) 450-4800

XI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

82. This Settlement Agreement shall be lodged with the Court for a period not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Settlement Agreement disclose new facts or new considerations which indicate that the Settlement Agreement is inappropriate, improper or inadequate.

83. This Settlement Agreement and any documents executed in connection herewith shall be subject to the approval of the Court. If for any reason the Court should

decline to approve this Settlement Agreement and any documents executed in connection herewith, or if a Final Order (as defined in this Paragraph) is entered reversing the Court's order approving this Settlement Agreement and any documents executed in connection herewith, (a) the parties shall not be bound hereunder or under any documents executed in connection herewith; (b) the parties shall have no liability to one another arising out of or in connection with this Settlement Agreement or under any documents executed in connection herewith; (c) this Settlement Agreement and any documents executed in connection herewith shall have no residual or probative effect or value, and it shall be as if they had never been executed; and (d) this Settlement Agreement and any documents executed in connection herewith may not be used as evidence in any litigation. The term Final Order shall mean an order or judgment as to which no further appeal may be taken or discretionary review sought.

84. Except as specifically provided elsewhere in this Settlement Agreement, the Court shall retain jurisdiction over both the subject matter of this Settlement Agreement and the parties hereto for the duration of the performance of the terms and provisions of this Settlement Agreement for the purpose of enabling any of the parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for

the construction, enforcement or application of this Settlement Agreement, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Paragraph 59 hereto.

XII. INTEGRATION AND COUNTERPARTS

85. This Settlement Agreement and any other documents to be executed in connection herewith shall constitute the sole and complete agreement of the parties hereto.

86. This Settlement Agreement may be executed in counterparts each of which shall constitute an original and all of which shall constitute one and the same agreement.

87. The Department of Justice of the United States (a) represents that the Natural Resources Trustees have agreed in writing to the terms of this Agreement and (b) certifies that it has been fully authorized to execute and legally bind such Natural Resources Trustees to this Agreement. Each undersigned representative of Manville and of the United States certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such party to this document.

XIII. DISMISSAL OF COMPLAINT

88. When the order of the Court approving the Settlement Agreement becomes a Final Order, the complaint herein shall be, and hereby is, dismissed with prejudice and without costs or attorneys' fees to any party.

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT

FOR THE UNITED STATES OF AMERICA

Date: 5/11/94

LOIS SCHIFFER
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date: 5/27/94

JOEL M. GROSS
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

MARY JO WHITE
United States Attorney for the Southern District of New York

Date: 6/7/94

By: EDWARD A. SMITH
Assistant United States Attorney
100 Church Street
New York, New York 10007
(212) 385-6208

Date: 6/6/94

DANIEL PINKSTON
Environmental Defense Section
Environment and Natural
Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date: 6/3/94

STEVEN A. HERMAN
Assistant Administrator for
Enforcement
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Date: 4/29/94

JOHN H. WHEELER
Senior Attorney
Office of Enforcement
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

FOR ~~MANVILLE~~

Date: 1/14/94

ROBERT D. BATSON
Assistant General Counsel
Manville Corporation
717 17th Street
Denver, Colorado 80202

DAVIS POLK & WARDWELL
Attorneys for Debtors

Date: Jan 25 94

By: _____
(A Member of the Firm)
450 Lexington Avenue
New York, New York 10017

IT IS SO ORDERED. JUDGMENT ENTERED IN ACCORDANCE WITH THE FOREGOING SETTLEMENT AGREEMENT.

_____
United States District Judge

Date: _____